



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 14, 1997

The Honorable Frank Madla  
Chair, Senate Nominations Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 97-023

Re: Whether a person with an ownership interest in a utilization review agent is eligible to serve on the Texas Health Care Information Council as a member under Health and Safety Code section 108.003(c)(7) (ID# 39463)

Dear Senator Madla:

You ask whether a person with an ownership interest in a utilization review agent is eligible to serve on the Texas Health Care Information Council (the "council") as a member under Health and Safety Code section 108.003(c)(7). We conclude that a person with an ownership interest in a utilization review agent is ineligible to serve on the council as a member under that provision for the following reasons.

Chapter 108 of the Health and Safety Code creates the council to "develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care." Health & Safety Code § 108.006(a). The council is composed of three nonvoting ex officio state agency members and fifteen members appointed by the governor. *Id.* § 108.003(a). Section 108.003(c)(7), the provision at issue in your request, requires the governor to appoint "two members who are not professionally involved in the purchase, provision, administration, or review of health care or health care insurance" and who have expertise in at least one of five areas.

You inform us that in January 1996, the governor appointed a person to the board, "John Doe," to fill a position under section 108.003(c)(7). Mr. Doe does business under the name "John Doe and Associates." A subsidiary of John Doe and Associates operates under four active assumed names, including Health Benefit Management. Health Benefit Management is certified as a "utilization review agent" under article 21.58A of the Insurance Code.

A utilization review agent is defined under article 21.58A as an entity that conducts utilization review for various types of entities, including an employer with employees who are covered under a health benefit plan, an insurer writing health insurance policies, and various types of health benefit plans. See Ins. Code art. 21.58A, § 2(2), (17), (21). Utilization review is defined as "a system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state." *Id.* § 2(20). A

utilization review agent may not conduct utilization review of health care provided in this state unless the commissioner of insurance has granted the utilization review agent a certificate. *Id.* § 3(a).

As noted above, a person appointed to the council under Health and Safety Code section 108.003(c)(7) may not be "professionally involved in the purchase, provision, administration, or review of health care or health care insurance." We believe it is clear from the definitions of utilization review and utilization review agent in article 21.58A of the Insurance Code that a utilization review agent reviews health care or health care insurance.

The more complicated question is whether this particular appointee is himself "professionally involved in the purchase, provision, administration, or review of health care or health care insurance." As stated above, the appointee, Doe, does business under the name John Doe and Associates. A subsidiary of John Doe and Associates, Health Benefit Management, is a certified utilization review agent. We assume, based on these facts, that Doe has at least some ownership interest in the certified utilization review agent. Chapter 108 of the Health and Safety Code does not define the phrase "professionally involved in." We believe, however, that this broad phrase is intended not only to embrace persons who are themselves directly involved in the review of health care or health care insurance for compensation but also those with an ownership interest in an entity that reviews health care or health care insurance. Therefore, we conclude that the appointee is ineligible to serve on the council as a member under Health and Safety Code section 108.003(c)(7).

### S U M M A R Y

A person with an ownership interest in a utilization review agent is ineligible to serve on the Texas Health Care Information Council as a member under Health and Safety Code section 108.003(c)(7).

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee